IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.737 OF 2006

The State of Maharashtra ..Appellant

Versus

Mohd.Asif Nazir Maniyar ..Respondent

Mr.K.V.Saste APP for the State/Appellant.

Mr.B.D.Joshi for the respondent.

Coram : J.N.Patel &
R.S.Mohite,JJ

Date : 11.01.2007.

PC

1. This is an appeal preferred by the State for enhancement of sentence of the respondent original accused Asif who has been held guilty of having committed offence under Sections 363, 366 & 376 of IPC for kidnapping and committing rape on minor girl aged 15 years by name Parveen. The respondent accused was tried alongwith 4 others in Sessions Case No.148 of 2004 by the Vth Ad-hoc Additional Sessions Judge, Nashik and by the judgment and order dated 28.3.2006 the trial Court acquitted the co-accused and found that the respondent accused Asif guilty of the offence for which he was charged and sentenced him to suffer R.I. for 5 years and fine of Rs.500/- in default to suffer further R.I. of one month for the offence punishable under

Sections 363, 366 and 376 of IPC, by which the State feels aggrieved.

2. The learned APP submitted that in normal course minimum sentence ought to have been 7 years and though the trial Court has found respondent guilty for having committed offence of kidnapping the prosecutrix Parveen and committing repeated rape on her and took her away at various places at Hyderabad and so on, sentence of 5 years R.I. was too lenient and that the trial Court had not given any reasons for giving lesser punishment.

3. We have gone through the judgment and order of the trial Court and find that the trial Court has taken into consideration mitigating factors while awarding lesser punishment such as age of the prosecutrix and that of the accused, and that the incident was an outcome of a love affair and it so happened that the prosecutrix happened to be below the age of 16. We do not find that the discretion exercised by the trial Court has resulted in mis-carriage of justice and therefore, we are not inclined to entertain the appeal in the limited issue of enhancement of sentence. Appeal therefore, stands dismissed.

(J.N.Patel,J)

(R.S.Mohite,J)